

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 07 March 2006

Case No. 2002-STA-32

In the Matter of

RAYMOND C. BELT

Complainant

v.

CONSOLIDATED FREIGHTWAYS CORPORATION

Respondent

BEFORE: RUDOLF L. JANSEN
Administrative Law Judge

RECOMMENDED DECISION AND ORDER DISMISSING COMPLAINT

The Director issued her findings on the complaint filed by Raymond C. Belt on April 26, 2002. Following an investigation, the Director found that the complaint had no merit. Mr. Belt then appealed that determination to this office and the matter was scheduled for hearing on June 28, 2002 in Columbus, Ohio. Subsequently, this office was notified that the Respondent had filed a voluntary petition in bankruptcy. I later entered an Order staying proceedings pending a bankruptcy determination.

On January 4, 2006, I received a letter from counsel for the Respondent, Joseph N. Gross, advising that Consolidated Freightways Corporation has not emerged from bankruptcy as of the present time and that a Plan of Liquidation had been confirmed by the bankruptcy court which has caused the Respondent's status to change from a debtor in possession to a liquidating trust. The letter further indicated that the Respondent's assets are being placed into a Trust for certain creditors of Consolidated Freightways and Affiliates of which the Complainant is not one. As a result of the receipt of that

letter, I issued an Order to Show Cause as to why this matter should not be dismissed.

In response to the Order, I received a statement from Raymond C. Belt, Jr. which reads as follows:

GIVEN THE WEIGHT THE TRANSPORTATION SECURITY ADMINISTRATION (TSA), THE USA PATRIOT ACT AND THE HOMELAND SECURITY ACT HAS PUT ON THE MOVEMENT AND TRANSPORT OF HAZARDOUS MATERIALS, I THINK THIS CASE NEEDS TO PROCEED UNTIL JUST CAUSE SHOWS THERE IS NO REMEDY FOR RESOLUTION UNDER THE CURRENT BANKRUPTCY PROCEEDINGS OF WHICH I HAVE NO INSIDE INFORMATION OR ABILITY TO GAUGE THE VALIDITY OF THE BANKRUPTCY PROCEEDINGS. DUE TO THE LACK OF INFORMATION, I REQUEST THIS BE PERSUED TO THE FULLEST EXTENT ON THE LAW UNTIL A SATISFACTORY AGREEMENT CAN BE REACHED.

PLEASE KEEP US APPRISED OF ANY AND ALL NEW DEVELOPMENTS.

That statement was received on February 27, 2006.

Later, Joseph N. Gross submitted a second and amended statement in which he indicates that the Complainant did not file a claim regarding this case in the bankruptcy proceeding and that the Plan of Liquidation contains no provision for any distribution to him as a result of this matter. However, through his Union, the Complainant did file claims for vacation pay, sick pay and other matters in the bankruptcy proceeding and according to Respondent's records has started to receive distributions on those other claims. The bar date for filing claims in the bankruptcy case was February 7, 2003. Mr. Gross' statement concerning the Complainant's failure to file a claim in the bankruptcy proceeding is consistent with the Complainant's comment that he has no information concerning the bankruptcy matter.

This record shows that on October 8, 2002, I issued an Order Relating to Notification of Bankruptcy Filing by Consolidated Freightways Corporation. That Order indicated that I had recently been advised that a voluntary petition in the United States Bankruptcy Court, Central District of California, Riverside Division, under Chapter 11 of the Act had been filed by the Respondent. I subsequently issued another Order on January 17, 2003 staying this proceeding pending disposition of the bankruptcy case. That same Order directed Respondent's

counsel to advise me at ninety day intervals as to the status of the bankruptcy matter. Various updates were received from Respondent's counsel over the last several years and the formal record shows that copies of each of those documents were served upon Raymond C. Belt and the record does not reflect that any of those mailings were returned as being undeliverable. Thus it is assumed that they were received by him.

Raymond C. Belt clearly had notification of the pending bankruptcy matter. Although he filed claims through his Union relating to other pay related matters, he failed to file a claim in the bankruptcy proceeding which would have protected any financial interest which he maintained in this case. He was served with various Motions and Orders relating to this proceeding which provided him the required notification. Respondent's counsel states that all of the Respondent's assets have been placed into the liquidating trust for satisfaction of those claims approved by the bankruptcy court. Since Complainant failed to file a claim with the bankruptcy court, I find that the bankruptcy court's Plan of Liquidation finally discharged any liability of Consolidated Freightways Corporation toward Mr. Belt in this case. Accordingly, the complaint must be dismissed. *Toland v. PST Vans, Inc.*, 93-STA-29 (Sec'y Sept. 7, 1994).

RECOMMENDED ORDER

In view of the above, IT IS HEREBY RECOMMENDED to the Secretary of Labor that the complaint of Raymond C. Belt in this proceeding be dismissed with prejudice.

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Rudolf L. Jansen
Administrative Law Judge

NOTICE OF REVIEW: The administrative law judge's Recommended Order Dismissing complaint, along with the Administrative File, will be automatically forwarded for review to the Administrative Review Board, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. See 29 C.F.R. § 1978.109(a); Secretary's Order 1-2002, §4.c.(35), 67 Fed. Reg. 64272 (2002).

Within thirty (30) days of the date of issuance of the administrative law judge's Recommended Order Approving Withdrawal of Objections and Dismissing Claim, the parties may file briefs with the Administrative Review Board ("Board") in support of, or in opposition to, the administrative law judge's order unless the Board, upon notice to the parties, establishes a different briefing schedule. See 29 C.F.R. § 1978.109(c)(2). All further inquiries and correspondence in this matter should be directed to the Board